

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 56 of 2024

Reserved on: 09.07.2024

Date of Decision: 22.07.2024.

...Petitioner

Versus

...Respondent

*Coram**Hon'ble Mr Justice Rakesh Kainthla, Judge.**Whether approved for reporting?¹ Yes*

For the Petitioner : Mr. J.R. Poswal, Advocate.

For the Respondent : Mr. R.S. Jaswal, Advocate.

Rakesh Kainthla, Judge

The petitioner/husband (respondent before the learned Trial Court) has filed the present petition against the order dated 19.12.2023, passed by learned Additional Chief Judicial Magistrate, Court No.2, Shimla (learned Trial Court) in Execution Petition No. 9003223 of 2015. (The parties shall hereinafter be referred to as per their status for convenience).

¹ *Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

2. Briefly stated, the facts giving rise to the present petition are that learned Judicial Magistrate First Class (JMFC), Court No.III, Shimla passed an interim order of maintenance in favour of the wife awarding ₹1,000/- per month as maintenance from the date of order i.e. 7.1.2009 till the disposal of the petition. The order was assailed and the revision was dismissed by the learned District Judge, (Forests), Shimla vide order dated 13.12.2013. The wife filed an application under Section 128 of Cr.P.C. for enforcing the order of maintenance dated 7.1.2009.

3. The husband filed an objection petition taking preliminary objections regarding the petitioner having concealed material facts from the Court and the petitioner not being entitled to maintenance in view of Section 125(4) of Cr.P.C. The contents of the petition were denied on merits. It was asserted that the wife was living in adultery. A divorce petition filed by the husband was allowed on the grounds of desertion, cruelty and adultery. The wife is living in adultery with one Ghanshyam. Mahila Mandal of Sai Brahmna had also made a complaint to the Deputy Commissioner. A complaint was also filed against the wife and the adulterer. Therefore, it was prayed that the execution petition be dismissed.

4. A reply was filed to the objection petition asserting that the wife came to know about the divorce on 5.5.2008 when she went home and found that her name was deleted from the ration card based on the decree of divorce. The wife filed an application to set aside the decree of divorce but could not pursue it due to the threat to her life. It was specifically denied that the wife was living in adultery. Hence, it was prayed that the objections be dismissed.

5. A rejoinder denying the contents of the reply and affirming those of the objections was filed.

6. The learned Trial Court held that the interim order of maintenance was passed despite the decree of divorce. The Court is bound to execute the order unless it is varied or vacated. Hence, a warrant of attachment of the immovable property of the husband was ordered to be issued.

7. Being aggrieved from the order passed by the learned Trial Court, the husband has filed the present petition asserting that the order passed by the learned Trial Court is against the facts and law. It was passed mechanically. The husband had filed a petition under Section 13 of the Hindu Marriage Act for seeking

divorce, which was allowed on the ground that the wife was leading an adulterous life. The grounds taken by the husband were not considered. Hence, it was prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

8. The wife filed a reply taking preliminary objections regarding lack of maintainability and the husband having not approached the Court with clean hands. The contents of the petition were denied on merits. It was asserted that the Court had considered all the objections raised before it. Therefore, it was prayed that the present petition be dismissed.

9. I have heard Mr. J.R. Poswal, learned counsel for the petitioner-husband and Mr. Ravinder Singh Chandel, learned Counsel for the respondent-wife.

10. Mr. J.R. Poswal, learned counsel for the petitioner-husband submitted that the wife is living in adultery and is not entitled to maintenance in view of Section 125(4) of Cr.P.C. He relied upon the judgments of *Yashika Mehndiratta Vs. Amit Mehndiratta 2013 (201) DTL 491*, *Bhagwat Pitambar Borse Vs. Anusayabai Bhagwat Borse 2018 (3) Civil Court Cases 224*, and

Dinesh Kumari and others Vs. Umesh Sharma, Latest HLJ 2009(1) 388 HP and Sukur Ali Vs. State of Assam 2011 (4) SCC 729 in support of his submission.

11. Mr. R.S. Jaswal, learned counsel for the respondent-wife submitted that the decree of divorce on the ground of adultery will not disentitle the wife from claiming maintenance from her husband. Section 125(4) applies to the wives who are still married to their husbands and does not apply to the wives who have divorced. Therefore, he prayed that the present petition be dismissed.

12. I have given considerable thought to the submissions and have gone through the records carefully.

13. It was laid down by the Hon'ble Supreme Court in *Rohtash Singh v. Ramendri, (2000) 3 SCC 180* that a wife is not entitled to maintenance from her husband if she is living in adultery, she has refused to live with her husband or they are living separately by mutual consent. These conditions will apply when the matrimonial relations subsist and not after the divorce. It was observed:-

“6. Under this provision, a wife is not entitled to any maintenance allowance from her husband if she is living

in adultery if she has refused to live with her husband without any sufficient reason or if they are living separately by mutual consent. Thus, all the circumstances contemplated by sub-section (4) of Section 125 CrPC presuppose the existence of matrimonial relations. The provision would be applicable where the marriage between the parties subsists and not where it has come to an end. Taking the three circumstances individually, it will be noticed that the first circumstance on account of which a wife is not entitled to claim maintenance allowance from her husband is that she is living in adultery. Now, adultery is the sexual intercourse of two persons, either of whom is married to a third person. This supposes the subsistence of marriage between the husband and wife and if during the subsistence of marriage, the wife lives in adultery, she cannot claim maintenance allowance under Section 125 of the Code of Criminal Procedure.”

14. This judgment was followed by the Hon’ble Supreme Court in *Swapan Kumar Banerjee v. State of W.B.*, (2020) 19 SCC 342, wherein it was held:-

5. Thereafter, in *Rohtash Singh v. Ramendri* [*Rohtash Singh v. Ramendri*, (2000) 3 SCC 180: 2000 SCC (Cri) 597] this Court took a similar view : (SCC p. 184, para 11)

“11. The learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights, duties and obligations should also come to an end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct

rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her.”

6. This view, which was taken by a two-Judge Bench has been confirmed in *Manoj Kumar v. Champa Devi* [*Manoj Kumar v. Champa Devi*, (2018) 12 SCC 748 : (2018) 5 SCC (Civ) 516 : (2018) 3 SCC (Cri) 694] by a three-Judge Bench, though, no specific reasons have been recorded in the judgment. Mr Debal Banerjee urged that the matter requires reconsideration. We are not in agreement with him for two reasons. Firstly, the view taken in the first two judgments has been confirmed by a three-judge Bench and, therefore, we cannot refer it to a larger Bench. Even otherwise, this view has been consistently taken by this Court and the said view is in line with both the letter and spirit of CrPC.

15. Hence, in view of the binding precedents of the Hon’ble Supreme Court, the plea that a divorced wife is not entitled to maintenance if she is living in adultery is not acceptable.

16. A copy of the decree of divorce shows that it was granted on 26.2.2007. The interim maintenance was allowed w.e.f. 7.1.2009. The maintenance was granted after the parties ceased to be husband and wife and the decree of divorce and the

findings recorded during the divorce proceedings would not affect the maintenance claim of the divorced wife. Thus, the learned Trial Court had rightly rejected the objection that the wife was not entitled to maintenance because she was living an adulterous life.

17. The judgment of the Delhi High Court in *Yashika Mehndiratta* (supra) and this Court in *Dinesh Kumari* (supra) related to a situation where the relationship between the parties was subsisting. In *Bhagwat Pitambar Borse* (supra), the maintenance was awarded w.e.f. 11.8.1992 and the decree of divorce was granted on 24.4.2006, which was confirmed on 24.7.2017. The Bombay High Court held that in view of a decree having been passed subsequently, the wife cannot be held entitled to the maintenance. Since in the present case, the maintenance was granted after the decree of divorce, therefore, this judgment will not assist the husband.

18. The judgment of the Hon'ble Supreme Court in *Sukur Ali* (supra) deals with the right of the counsel which is not relevant in the present case.

19. In view of the above, there is no infirmity in the order passed by the learned Trial Court.

20. Consequently, the present petition fails and the same is dismissed.

21. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

22nd July, 2024
(Chander)